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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ERIN WARE,

Plaintiff

v.

RN LINDSEY,

Defendants

Case No. 3:20-CV-00136-RCJ-WGC

ORDER

This action began with a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by Plaintiff, who is incarcerated in the custody of the Nevada Department of Corrections (NDOC). On April 29, 2021, the Court issued an order dismissing the complaint with leave to amend and directed Plaintiff to file an amended complaint within 30 days. (ECF NO. 3). The 30-day period has now expired, and Plaintiff has not filed an amended complaint or otherwise responded to the Court's order. District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local

1 rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal*
2 *Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure to comply with
3 court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (affirming
4 dismissal for lack of prosecution and failure to comply with local rules).

5 In determining whether to dismiss an action for lack of prosecution, failure to
6 obey a court order, or failure to comply with local rules, the court must consider several
7 factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need
8 to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
9 favoring disposition of cases on their merits; and (5) the availability of less drastic
10 alternatives. See *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24;
11 *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

12 Here, the Court finds that the first two factors, the public's interest in
13 expeditiously resolving this litigation and the Court's interest in managing the docket,
14 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also
15 weighs in favor of dismissal, since a presumption of injury arises from the occurrence of
16 unreasonable delay in filing a pleading ordered by the court or prosecuting an action.
17 See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public
18 policy favoring disposition of cases on their merits—is greatly outweighed by the factors
19 in favor of dismissal discussed herein. Finally, a court's warning to a party that his
20 failure to obey the court's order will result in dismissal satisfies the "consideration of
21 alternatives" requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33;
22 *Henderson*, 779 F.2d at 1424. The Court's order requiring Plaintiff to file an amended
23 complaint within 30 days expressly stated: "IT IS FURTHER ORDERED that, if Plaintiff
24 chooses to file an amended complaint curing the deficiencies of his complaint, as
25 outlined in this order, Plaintiff must file the amended complaint within 30 days from the
26 date of entry of this order. THE COURT FURTHER ORDERS that, if Plaintiff fails to file
27 an amended complaint curing the deficiencies outlined in this order, this action will be
28 dismissed with prejudice for failure to state a claim." (ECF No. 3). Thus, Plaintiff had

adequate warning that dismissal would result from his noncompliance with the Court's order to file an amended complaint within 30 days.

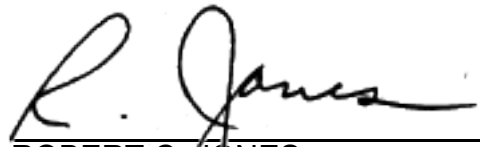
IT IS THEREFORE ORDERED that this action is **DISMISSED WITH PREJUDICE** based on Plaintiff's failure to file an amended complaint in compliance with this Court's April 29, 2021, order and for failure to state a claim.

IT IS FURTHER ORDERED that Plaintiff's application to proceed *in forma pauperis* (ECF No. 1) is **GRANTED**. Plaintiff shall not be required to pay an initial installment of the filing fee. Even though this action is dismissed, the full filing fee must still be paid pursuant to 28 U.S.C. § 1915(b)(2).

IT IS FURTHER ORDERED that, pursuant to 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act, the Nevada Department of Corrections will forward payments from the account of **ERIN WARE, #1017483** to the Clerk of the United States District Court, District of Nevada, 20% of the preceding month's deposits (in months that the account exceeds \$10.00) until the full \$350 filing fee has been paid for this action. The Clerk of the Court will send a copy of this order to the Finance Division of the Clerk's Office. The Clerk will send a copy of this order to the attention of **Chief of Inmate Services for the Nevada Department of Corrections**, P.O. Box 7011, Carson City, NV 89702.

IT IS FURTHER ORDERED that the Clerk of Court will close this case and enter judgment accordingly.

DATED this 25th day of June, 2021.


ROBERT C. JONES
UNITED STATES DISTRICT JUDGE